180-1 ADDED 11/10
Federal Foster Care (AFDC-FC) benefits are meant to provide maintenance care funds to cover the cost of, and the cost to provide, food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, liability insurance with respect to the child, and reasonable travel costs for visitations. (42 U.S.C. §675,(4)(A))

180-2 ADDED 11/10
When arranging for a child's placement, the social worker (SW) shall ensure completion of the documentation necessary to initiate AFDC-FC payments as appropriate. (§31-405.1(u))

180-3
When a child in FC reaches age 18, the child shall receive continued benefits until age 19, provided all the following conditions are met. (a) The FC child was attending high school or a vocational-technical training program on a full-time basis prior to reaching age 18. (b) The child continues to meet FC eligibility requirements of this section; reside in FC; and attend on a full-time basis either a high school or if he/she has not completed high school, a vocational technical training program which cannot result in a college degree as specified in §42-101.2 provided he/she is reasonably expected to complete either program before reaching age 19. (c) The child and the placement agency have signed a mutual agreement which documents the continued need for FC placement. (§45-201.111, revised effective November 26, 1997)

Full-time attendance must be defined and verified by the school. (§45-201.111(b)(3), effective November 26, 1997)

180-4
In order to be eligible for AFDC-FC benefits, a child must meet the age requirements of §42-100 et seq.; the property requirements in §42-200 et seq.; the residence requirements in §42-400 et seq.; the citizenship and alienage requirements in §42-430 et seq.; the social security enumeration requirements in §40-105.2; the income requirements in §44-100 et seq.; the child support requirements in §§43-200, 43-201.2, and 43-203; and the application requirements in §40-100 et seq. (§§45-201.1-.5)

180-4A
Federal law has provided, since December 14, 1999, that each child can have up to $10,000 in property. While state regulations (§45-201.12) have not been amended as of November 1, 2002, the CDSS has issued instructions to counties as follows: "Accordingly, for State and federal AFDC-FC, any child may now retain up to $10,000 in property. For purposes of determining whether the child would have been eligible for AFDC in the petition month as required by ... §45-202.33, the family may also have up to $10,000 in property and still qualify

for AFDC. The $10,000 is in addition to the $1,500 vehicle limit. This increased property limit is effective December 14, 1999." (All-County Letter No. 02-45, June 25, 2002 implementing 42 United States Code 672(a))

180-4B
On December 14, 1999, federal law, as contained in the United States Code (USC), was amended as follows:

> "In determining whether a child would have received aid under a State plan approved under section 602 of this title (as in effect on July 16, 1996), a child whose resources (determined pursuant to section 602(a)(7)(B) of this title, as so in effect) have a combined value of not more than $10,000 shall be considered to be a child whose resources have a combined value of not more than $1,000 (or such lower amount as the State may determine for purposes of such section 602(a)(7)(B) of this title)."

(42 USC §672(a))

180-4C REVISED 5/05
State law was amended effective January 1, 2002 to provide that in addition to the personal property permitted by other provisions, an FC child may retain resources with a combined value of not more than $10,000, consistent with 42 United States Codes §672(a). Up to $10,000 in cash savings is exempt for purposes of determining eligibility and grant amount. (§45-201.12,)

180-5
When a caretaker relative receives AFDC-FC for the FC children, that relative may be eligible to receive AFDC-FG for himself/herself.

If that caretaker relative chooses to receive AFDC-FG, and then loses AFDC-FG eligibility, there is potential eligibility for Transitional Child Care and Transitional Medical Care. (All-County Letter No. 94-91, October 31, 1994, effective March 1, 1994)

180-6
State regulations in §82-506 provides as follows:

“As a condition of eligibility for assistance, each CalWORKs or foster care applicant/recipient shall assign to the county all rights to child/spousal support for the applicant/recipient or any other family member required to be in the AU under Section 82-820.3.” (§82-506.1, effective October 1, 1998)

180-6A
As a condition of eligibility for and under the CalWORKs or Foster Care aid programs, each applicant or recipient shall assign to the district attorney any rights to support from any other person the applicant or recipient may have on his or her own behalf or on behalf of any other

family member for whom the applicant or recipient is applying for or receiving aid. Receipt of aid automatically constitutes an assignment by operation of law. (W&IC §11477(a); MPP §82-506.1)

180-7 ADDED 12/07
If the county determines that the child is no longer eligible for CalWORKs because he/she is living with a non-relative caretaker rather than a relative caretaker, the county should inform the child's non-relative caretaker that Aid to Family with Dependent Children (AFDC)-Foster Care benefits may be available for the child. In this instance, the county should also inform the non-relative caretaker that the local legal aid office or county bar association may be able to provide additional information and assistance in pursuing such benefits.

If the child and non-relative caretaker wish to apply for Foster Care benefits at that time, the CalWORKs worker should refer them to the county's Foster Care office, where a determination of Foster Care eligibility can be made. (All County Information Notice I-36-07, June 27, 2007)

180-8 ADDED 3/08
Federal Child Welfare Policy Manual, Section 8.1B – TITLE IV-E, Administrative Functions/Costs, Allowable Costs – Foster Care Maintenance Payments Program, Question 24 states:

The State may provide a full month's title IV-E foster care maintenance payment to the licensed provider if the brief absence does not exceed 14 days and the child's placement continues with the same provider. Otherwise, the State must prorate its claims if the child is absent from the placement for more than a reasonable brief period. (ACL 07-49, December 19, 2007)

180-9 ADDED 3/09
State law mandates county children's social workers (CSW) and county probation officers (PO) to educate foster children in out-of-home care of their personal rights at least once every 6 months, at the time of a regularly scheduled contact with the child. These rights are afforded to children in relative and non-relative foster family homes, small family homes, group homes, transitional housing placement facilities, and community treatment facilities. Welfare and Institutions Code section 16009.9 provides a list of these rights, which include under subdivision (a)(20) the right "to review his or her own case plan and plan for permanent placement if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan." (W&IC §§16501.1, (f)(4), 16009.9(a); §§31-401.5, 31-445.2; ACL No. 08-51, November 13, 2008)

180-10 ADDED 11/10
Federal financial participation is available for the following items: (1) Payments of assistance continued pending a hearing decision. (2) Payments of assistance made to carry out hearing

decisions, or to take corrective action after an appeal but prior to hearing, or to extend the benefit of a hearing decision or court order to others in the same situation as those directly affected by the decision or order. Such payments may be retroactive in accordance with applicable Federal policies on corrective payments. (Title. 45, CFR §205.10,(b))

180-11 ADDED 11/10
Except as specified, the following regulations are applicable to all programs funded under titles IV-B and IV-E of the Act: (p) 45 CFR Part 205--General Administration--Public Assistance Programs. Only the following sections are applicable: (1) § 205.5--Plan amendments. (2) § 205.10--Hearings. (3) § 205.50--Safeguarding information for the financial assistance programs. (4) § 205.100--Single State agency. (Title 45, CFR 1355.30(p)(2))

180-20 ADDED 11/10
When a child who is in foster care reaches age 18, the child shall continue to be eligible for AFDC-FC up to age 19, provided all the following conditions are met:

(a) The child was receiving AFDC-FC and attending high school or a vocational-technical training program on a full-time basis prior to reaching age 18;

(b) The child continues to:

(1) Meet the AFDC-FC eligibility requirements of this section;

(2) Reside in foster care; and

(3) Attend on a full-time basis either a high school or, if he/she has not completed high school, a vocational-technical training program that cannot result in a college degree as specified in Section 42-101.2 provided he/she is reasonably expected to complete either program before reaching age 19. Full-time attendance must be defined and verified by child's school. (§45-201.111(a), (b))

180-20A ADDED 11/10
A child 18 years of age is eligible for CalWORKs (formerly AFDC) only if he/she is enrolled as a full-time student (as defined by the school) in high school or, if he/she has not completed high school, in a vocational or technical training program which cannot result in a college degree, provided he/she can reasonably be expected to complete either program before reaching age 19. (§42-101.2.)

180-20B ADDED 11/10
Evidence which is acceptable for determination of a child's age includes, but is not limited to, a birth certificate; hospital, physician or midwife birth record; baptismal or church record;

confirmation or church records; school records; Indian Agency records; immigration or naturalization records; adoption decree; passport; state or federal census records; the affidavit of an adult if it is based on personal knowledge; or entries in a family Bible or other genealogical record or memorandum of such applicant. (§42-111.1.)

180-20C ADDED 11/10
The county will inform an applicant what evidence is desired, why it is needed, and how it will be used and the applicant shall cooperate with the county the fullest extent possible. When it is not possible for the applicant to obtain the necessary evidence, the county shall obtain it for the applicant. (§40-157.21.)

180-20D ADDED 11/10
State law mandates county children's social workers (CSW) and county probation officers (PO) to educate foster children in out-of-home care of their personal rights at least once every 6 months, at the time of a regularly scheduled contact with the child. These rights are afforded to children in relative and non-relative foster family homes, small family homes, group homes, transitional housing placement facilities, and community treatment facilities.

Welfare and Institutions Code section 16009.9 provides a list of these rights, which include under subdivision (a)(20) the right "to review his or her own case plan and plan for permanent placement if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan." (W& IC §§16501.1(f)(4), 16009.9(a); §§31-401.5, 31-445.2; ACL No. 08-51, issued Nov. 13, 2008)

180-21 ADDED 11/10
In addition, to continue state or federal Foster Care eligibility and funding, the child and the placement agency have signed a mutual agreement which documents the continued need for foster care placement. The agreement shall be signed prior to or within the month the child reaches age 18. A mutual agreement shall not be required if the placement is due to a court order which remains in effect or if the child is not capable of making an informed agreement. If the court order is dismissed subsequent to the month in which the child reaches age 18, a mutual agreement must be executed within the month the dismissal occurs. (§45-201.111(c).)

180-21A ADDED 11/10
The Mutual Agreement for 18 year old foster children, state form SOC 155 B, states that the foster child requests that the county place the child in a licensed/certified foster home or children's institution. The child is to state the reason for this request in space provided. Form

continues to state that the child expects to remain in Foster Care until completion of his or her education/training by age 19. The county agency is to include:

1. Arrangements for the child's care in a licensed certified Foster Care Facility;

2. Selection of a home with the child's participation;

3. Supervision of the child while in Foster Care;

4. Provision of social services for the child;

5. Arrangements for the child's medical care;

6. Assistance in planning for the child to leave foster care; and,

7. A provision of a grievance procedure. (State Form SOC 155 B, last revised Mar. 2000.)

180-21B ADDED 11/10
The SOC 155 B form states that the child is to recognize his or her responsibility for participating in the Foster Care plan, agreeing to:

1. Assist the county agency in determining the child's financial need and eligibility while in foster care;

2. Keep the agency informed of the child's progress with his or her education/training program;

3. Discuss with the agency placement problems; and,

4. Give reasonable notice to the placement worker the child plans to move, noting the child retains the right to withdraw his or her consent to placement at any time.

The agreement is signed by the children's social worker (CSW) and the foster child. (State Form SOC 155 B, last revised Mar. 2000.)

181-1
In order for a child to be eligible for federal AFDC-FC, the court order which places the child shall result in the child's placement in foster care with a nonrelative or with a different relative than the one from whose home he or she was removed. This requirement shall be determined to be met if the child was absent from the parent's or relative's home in the month the petition which initiated the court action for removal was filed, provided the child had resided with such parent or relative within any of the six months prior to the month that the petition was filed. (§45-202.411(b))

181-1A
Under federal regulations in order to qualify for federal AFDC-FC, a child's removal from the home, per Social Security Act §472(a)(1), "… must have been the result of a judicial

determination (unless the child was removed pursuant to a voluntary placement agreement) to the effect that continuation of residence in the home would be contrary to the welfare, or that placement would be in the best interest, of the child. The contrary to the welfare determination must be made in the first court ruling that sanctions (even temporarily) the removal of a child from home. If the determination regarding contrary to the welfare is not made in the first court ruling pertaining to removal from the home, the child is not eligible for

title IV-E foster care maintenance payments for the duration of that stay in foster care." (45 Code of Federal Regulations (CFR) §1356.21(c))

In certain situations, there are limitations to federal eligibility when a child has been removed from the home of a specified relative:

"(1) For the purposes of meeting the requirements of section 472(a)(1) of the [Social Security] Act, a removal from the home must occur pursuant to:

"(i) A voluntary placement agreement entered into by a parent or relative which leads to a physical or constructive removal (i.e., a non-physical or paper removal of custody) of the child from the home; or

"(ii) A judicial order for a physical or constructive removal of the child from a parent or specified relative.

"(2) A removal has not occurred in situations where legal custody is removed from the parent or relative and the child remains with the same relative in that home under supervision by the State agency.

"(3) A child is considered constructively removed on the date of the first judicial order removing custody, even temporarily, from the appropriate specified relative or the date that the voluntary placement agreement is signed by all relevant parties."

(45 CFR §1356.21(k))

181-2 ADDED 11/10

The term "dependent child" means a needy child (1) who has been deprived of parental support or care by reason of the death, continued absence from the home (other than absence occasioned solely by reason of the performance of active duty in the uniformed services of the United States), or physical or mental incapacity of a parent, and who is living with his father, mother, grandfather, grandmother, brother, sister, stepfather, stepmother, stepbrother, stepsister, uncle, aunt, first cousin, nephew, or niece, in a place of residence maintained by one or more of such relatives as his or their own home. (42 U.S.C., §606, subd. (a); as it existed Jul. 1996; incorporated by reference as to the definition of a “relative” into 42 U.S.C., §672(a))

181-2A ADDED 11/10

"Relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand" or the spouse of any of these persons even if the marriage was terminated by death or dissolution. (Welf. & Inst. Code, §11400(m))

181-2B ADDED 11/10
Relatives and their respective degrees of relatedness are listed as follows:

1st degree = parents; 2nd degree = grandparent or sibling; 3rd degree = great grand parent, uncle or aunt, and niece or nephew; 4th degree = great-great grandparent, great-uncle or great-aunt, and first cousin; and, 5th degree = great-great-great grandparent, great-great uncle or aunt, and first cousin once removed. Degrees of relatedness attaches to stepparents, stepsiblings, and spouses of any of the relatives listed above, even if marriage was terminated by death or dissolution. (ACL No. 05-13 Errata, issued Feb. 15, 2006.)

181-3 REVISED 5/05
In the FC program, FFP means Federal Financial Participation and is participation by the federal government in sharing the cost of AFDC-FC payments. (§45-101.1(f)(3))

181-4 ADDED 6/04
An additional requirement for federal AFDC-FC eligibility is that the child be living in an “eligible facility”. An eligible facility can include the “approved” home of a relative, former relative or nonrelative extended family member. (§45.202.51)

181-5
In order to qualify for the federal AFDC-FC Program, a special requirement is that the child shall be removed from the home of a parent or relative as a result of a court order. This regulation was modified effective January 1, 1993 to allow aid to children removed by voluntary placement in certain situations. (§45-202.4)

181-5A
A child is potentially eligible for federal AFDC-FC benefits when the child is removed from the home of a parent or guardian as a result of a voluntary placement agreement. Both of the following conditions must exist: (1) There is a mutual decision between the child's parent or guardian and the placing agency; and (2) There is a written binding agreement between the County Welfare Department, a licensed adoption agency or CDSS acting as an adoption agency, and the parent or guardian. (§45-202.412)

A child voluntarily placed shall be eligible for AFDC-FC payments for a period up to 180 days beginning with the date one of the above-mentioned agencies assumes responsibility under a voluntary placement agreement, provided all other eligibility requirements are met. (§45-202.412(c))

181-5B
When a child is voluntarily placed into foster care by his/her parents or guardians and remains in out-of-home care in excess of 180 days, the county must comply with procedures described in W&IC Section 16507.6. Pursuant to this section, if the child is not going to be returned home to his/her parent within the first 180 days, the county must either file a petition to have the minor declared a dependent child under Section 300 of the W&IC or refer the minor to a licensed adoption agency for consideration of adoptive planning and receipt of a permanent relinquishment of care and custody rights from the parents pursuant to Section 8700 of the Family Code.

In addition, counties are reminded that, for children who are to be continued in out-of-home care beyond the 180 days of the VPA, the county
must ensure a judicial determination is made within the initial 180 days of placement, that the continued placement is in the best interests of the child. This best interest finding must be made at the initial court hearing that is held as the result of the filing of the petition under W&IC Section 300, as described above. This finding is required in order for federal eligibility to continue after the initial 180 day period. (See 42 United States Code. Section 672(e) and (g)1 and 45 Code of Federal Regulations Section 1356.22(b)).

(All County Information Notice I-74-09, October 26, 2009)

181-5C ADDED 11/10
CDSS has mandated the counties to use the state VPA placement request (form SOC 155) in executing all VPAs, signed by both the county and the parents. The form acknowledges that the biological parent is granting custody and control to the county; that the agency may give legal consent for medical, education, and other services excluding those services listed by the parent on the form; that the VPA is limited to six months provide visitation rights; provide the agency the right to move the child to an appropriate home or facility; the agency promises to provide a suitable home and services; provide grievance rights on such changes; and provide specified rights to the minor. (All-County Letter (ACL) No. 01-33, June 20, 2001)

181-6 ADDED 7/06
Changes to the foster care program made by the Deficit Reduction Act of 2005 alter foster care eligibility criteria established under *Rosales* v. *Thompson.* Effective immediately, counties must cease basing new eligibility decisions for foster care upon MPP §45-202.332. Eligibility must be based on the home of the parent from whom the child was removed, as set forth in MPP §45-202.331.

Any cases previously determined eligible for foster care using §45-202.332 on or after February 8, 2006 should be evaluated for CalWORKs, KinGAP or other applicable programs. Counties must immediately track all *Rosales* cases for which foster care benefits were paid starting October 1, 2005. (All County Information Notice I-19-06, March 30, 2006)

181-6A ADDED 9/06
The Deficit Reduction Act (DRA) amends the federal Title IV-E statute to alter the foster care eligibility criteria previously established in *Rosales* v. *Thompson*. The CDSS has now received the district court's order issued on June 16, 2006, and the federal instruction letter, ACYF-CB-IM-06-2, issued on June 9, 2006, containing instructions related to the impact of the federal DRA on Rosales cases.

The federal transmittal requires that counties must cease basing new eligibility decisions for foster care upon Manual of Policies and Procedures (MPP) 45-202.332 (the *Rosales* criteria) after February 8, 2006, the date the DRA was enacted; eligibility must be based on the home of the parent from whom the child was removed, as set forth in MPP 45-202.331. Although the *Rosales* court order confirms this instruction, the court has delayed the implementation date for the new eligibility criteria to June 9, 2006, which supersedes the date stated in the federal transmittal dated February 8, 2006.

In addition, counties must now reexamine cases, if any, in which *Rosales* eligibility has already been terminated, and those in which *Rosales* eligibility was denied, on or after February 8, 2006, based on the DRA, as instructed by ACIN I-19-06. This ACIN instructed counties to "immediately 'track' all *Rosales* cases until clarification is received from the court and DHHS." Per the court order, the counties must continue to apply the *Rosales* criteria in MPP 45-202.332 to determine eligibility until June 9, 2006, and must pay any benefits due to such cases until the redetermination of eligibility as required by the federal instructions.

For cases that were determined eligible for foster care benefits using *Rosales* criteria on or prior to February 8, 2006, the federal transmittal also requires that eligibility must be redetermined based upon MPP 45-202.331 on the annual redetermination date, beginning on February 8, 2006. The federal court again confirmed this instruction to redetermine eligibility but delayed the implementation date until June 9, 2006. Specifically, the federal instructions regarding redeterminations of eligibility, as modified by the court order, states as follows:

> "For children in the Ninth Circuit who were determined eligible only because of the *Rosales* decision on or prior to [June 9, 2006], we will permit eligibility for Title IV-E foster care maintenance payments to continue through the month when the child's next annual redetermination of eligibility is due. After the month of redetermination, States will no longer be eligible to receive Title IV-E foster care maintenance payments on behalf of children determined eligible only because of the *Rosales* decision, in accordance with section 472(a) of the Act as amended… if redeterminations are not held timely (i.e. at least every 12 months) for children determined eligible pursuant to *Rosales*, the child will

not be eligible for Title IV-E foster care maintenance payments from the month subsequent to the month when the last redetermination was due."

(All County Letter 06-19, June 30, 2006)

181-10 ADDED 11/10
Notwithstanding the passage of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) and implementation of the block grant Temporary Assistance for Needy Families (TANF), the former Aid to Families with Dependent Children (AFDC) entitlement provisions continued to be effective for establishing the deprivation eligibility to receive federal foster care benefits (AFDC-FC). (All County Letter (ACL) No. 98-01, issued Jan. 2, 1998.)

181-10A ADDED 11/10
The child shall have been linked to the federal Aid to Families with Dependent Children - Family Group/Unemployed (AFDC-FG/U) Program as it existed on July 16, 1996 (i.e., linkage, deprivation, and income factors were not replaced by PRWORA), during the month in which the petition was filed with the juvenile court, which led to the child's placement into foster care pursuant to a detention or dispositional order or the month in which the voluntary placement agreement was signed. (§45-202.33.)

181-10B
Effective July 1, 1997 Federal and State AFDC-FC eligibility shall be determined using the AFDC eligibility standards which were in effect on July 16, 1996. No AFDC waivers may be applied in determining eligibility. (All-County Letter No. 98-01, January 2, 1998)

181-10C ADDED 11/10
In order to be eligible for AFDC-FC benefits, a child must meet the age requirements (see §42-100 et seq.); the property requirements (see §42-200 et seq.); the residence requirements (see §42-400 et seq.); the citizenship and alienage requirements (§42-430 et seq.); the social security enumeration requirements (§40-105.2); the income requirements (§44-100 et seq.); the child support requirements (§§43-200, 43-201.2, and 43-203); and, the application requirements (§40-100 et seq). (§§45-201.1-.5.)

181-10D ADDED 11/10
Except as provided in Section 45-202.341 [relating to temporary home visitations orders], the determination that the child met the federal eligibility criteria of linkage to federal AFDC-FG/U

shall be a one-time determination. Therefore, subsequent changes in the child's placement or circumstances, except as specified in Section 45-202.341, shall not affect this initial linkage determination. However, if as a result of such change some other general or federal eligibility requirement is not met, FFP shall not be available until the child meets all other federal and general eligibility requirements. (§45-202.34.)

181-10E ADDED 11/10
Subsequent dismissal of jurisdictional and dispositional orders shall not result in the loss of Federal Financial Participation (FFP) provided all other general and federal AFDC-FC requirements continue to be met, and the court order was dismissed because the child turned 18 and certain other requirements are met; or the court order was dismissed because the child was relinquished or a termination of parental rights of one or both parents was granted and placement and care is with one of certain designated agencies. (§45-202.411(c), as modified effective November 26, 1997)

181-11 ADDED 6/07
Some AFDC/TANF requirements are different from those of the AFDC program as it existed on July 16, 1996, due to AFDC demonstration projects. Demonstration projects incorporated under the AFDC/TANF program include Assistance Payments Demonstration project/California Work Pays Demonstration Project (APDP/CWPDP).

Counties must use July 16, 1996 eligibility factors, excluding waivers, to determine whether the child would have been eligible for AFDC in the petition month and whether the child continues to be eligible at redeterminations.

The following divergent eligibility standards must be addressed:

- Recipient Property Limits

Counties may not apply recipient property limits associated with APDP/CWPDP including the $2000 personal property limit, the $4500 vehicle limit or the $5000 restricted account limit.

Prior to January 1, 1998, state regulations provided that the net market value of nonexcluded real and personal property owned by an AFDC family shall not exceed $1,000. If this limit is exceeded, the family or child is ineligible. The property limit is $2,000 for AFDC FG/U recipients subject to the California Works Pays Demonstration Project. (§42-207.1, invalidated by W&IC §11155)

Prior to January 1, 1998, state regulations provided that one motor vehicle is exempt from consideration as property if its net market value does not exceed $1,500. If the market value

exceeds $1,500, the excess over $1,500 shall be treated as a resource and included in the property limit. (§42-213.2z., invalidated by W&IC §11155)

- Income Standards

The MBSAC and 185% income test as of July 16, 1996 must be used to establish linkage to foster care.

- 100 Hour Rule

Even though the 100 hour rule was waived for AFDC recipients as of December 12, 1992, this rule must be used for initial determinations and redeterminations when deprivation is based on unemployment.

- $30 and 1/3 Income Disregard Limit

For purposes of AFDC-foster care eligibility, the four month time limit applies when making initial AFDC linkage determinations.

(All-County Letter No. 98-01, January 2, 1998)

181-12
Federal Child Welfare Policy Manual, Section 8.4, Title IV-E General Title IV-E Requirements, AFDC-Eligibility, clarifies that the linkage determination requirement set out in MPP §45-202.33 must be made using the circumstances of the child in the home of removal PRIOR to the actual removal of the child. For example, the parents may be living together at the time of removal, but one or both parents may go to jail after the incident of abuse. The parental deprivation which happened concurrent with or after the child's removal cannot be used to satisfy deprivation requirements. (ACL 07-49, December 19, 2007)

181-12A ADDED 11/10
Linkage to the AFDC-FG/U Program, including deprivation, must be met in the month of, but prior to, the child's removal from the home. The State may not establish the child's deprivation based on household circumstances that occur after the child is removed. This is compliance with federal law (§472(a)(1)(B) of the Social Security Act, or 42 USC, §672(a)(1)(B)) mandating that linkage is determined when the child, while in the home, meets the AFDC eligibility requirement, as stated in section 472(a)(3) of the Act (42 USC, §672(a)(3)). (ACL No. 07-49, issued Dec. 19, 2007.)

181-13 ADDED 11/10

A child is considered deprived of parental support if either parent is deceased, physically or mentally incapacitated, the principal earner is unemployed (see §41-440), or either parent is continually absent from the child's home (see §41-450). (§§41-401.11 - .14.)

181-14 ADDED 11/10
Deprivation due to the absence of a parent exists with the "continued absence" of that parent, meaning the parent is physically absent from the home, and this absence results in an interruption or termination of the parent's functioning as a provider of maintenance, physical care, or guidance of the child, regardless of the reason for or the length of time of the absence. If such an interruption or termination of parental performance exists, continued absence may exist even if the parent remains in contact with the child through regular or frequent visitation. (§41-450.11.)

181-14A ADDED 11/10
If an AU appears to have received cash aid fraudulently in the month of removal because case records show that the father was in the home and deprivation is challenged, this allegation does not necessarily affect AFDC-FG/U linkage determination for federal Foster Care unless the fraud has been proven in the aid case and the family is assessed an overpayment for this lack of deprivation. If this occurs, the initial linkage and deprivation determination would have to be reviewed. (All County Letter (ACL) No. 94-75, Question 22, issued Sept. 12, 1994.

181-15 ADDED 11/10
For the purposes of establishing an unemployment deprivation, an "unemployed parent" is one of the natural or adoptive parents with whom the child is living, who is the "principal earner," and who is not employed or employed for less than 100 hours in a month. (§41-440.1(a), eff. Jul. 1, 1989.)

181-15A ADDED 11/10
The "principal earner" in a home with both parents, is the parent who earned the greater amount of income in the 24-month period, the last month of which immediately preceded the date of application, or the date of an interprogram status change. (§§41-440.1(c), (d)(2), eff. Jul. 1, 1989.)

181-15B ADDED 11/10

In order to establish unemployment deprivation, it was necessary for the principal earner to have been unemployed (see §41-440.1(a)) for at least 30 consecutive calendar days prior to the receipt of cash assistance. The 30 days began the first day of the month in which the applicant principal earner worked less than 100 hours. (§41-440.22, eff. Jul. 1, 1989.)

181-15C ADDED 11/10
The principle earner, who is apparently eligible for UIB shall apply and accept any UIB benefits he or she is entitled to receive, when referred by the county. (§41-440.24, as modified Mar. 1, 1992.)

181-15D ADDED 11/10
Prior to January 1998, in order to establish unemployment deprivation under AFDC, it was also necessary that the principal earner had a "connection with the labor force." This meant that in 6 calendar quarters within any 13-month calendar-quarter period which ended within one year before the quarter of application or transfer, the principal earner either earned a gross of $50.00 during the quarter, or participated during the quarter in any activity administered under the Work Incentive Program (WIN) or demonstration program (WIN Demo), the Community Work Experience Program (CWEP), or, the GAIN program (now called Welfare-to-Work, or WTW). Any combination of either gross earnings or program participation is allowed in meeting the 6 quarters. The quarter in which the application is submitted or transfer is implemented shall not count as one of the 13 calendar quarters. (§§41-440.411, .42, as modified Mar. 1, 1992; Title 45, CFR §233.100 [as to 6 or 13 quarter requirement].)

181-15E ADDED 6/07
Prior to January 1, 1998, state regulations provided that, for federal AFDC-U eligibility purposes, the principal earner must have established a connection with the labor force by meeting the requirements of any of the following in six calendar quarters within any 13-calendar-quarter period which ends within one year before the quarter of application: (a) earned gross income of at least $50 per quarter or (b) participated in the Work Incentive Program, Work Incentive Demonstration Program, Community Work Experience, or Greater Avenues for Independence, or (c) a combination of (a) and (b), or (d) by receiving or being eligible to receive Unemployment

Insurance Benefits within one year before application or transfer to federal AFDC-U. (§41-440.41, invalidated by W&IC §11201, and formally repealed July 1, 1998 as a requirement under CalWORKs.)

181-16 ADDED 11/10
Deprivation due to physical or mental incapacity of a parent shall be deemed to exist when the parent of an otherwise eligible child has a physical or mental illness, defect, or impairment that

reduces substantially, or eliminates the parent's ability to support or care for the child for a period which is expected to last at least 30 days (this is not intended to be a waiting period) and which is supported by acceptable evidence. Where the incapacity is initially expected to last less than 30 days but in fact lasts longer, payment shall be granted retroactively effective the correct beginning date of aid (see Section 44-317.12 and 44-317.8). (§41-430.1.)

181-16A ADDED 11/10
Deprivation exists if the incapacity:

.11 Prevents the parent from working full time at a job in which he or she has customarily engaged; and from working full time on another job for which he or she is equipped by education, training or experience, or which can be learned by on-the-job training; or

.12 Is the reason employers refuse to employ him or her for work the parent could do. This includes behavioral disorders which interfere with the securing and maintaining of employment; or

.13 Prevents him or her from accomplishing as much on a job as a regular employee and is the reason the parent is paid on a reduced basis even though working full time; or

.14 Qualifies the parent and he or she is employed in a job which is rehabilitative, therapeutic or in a sheltered workshop not considered to be a full-time job; or

.15 Reduces substantially or eliminates the parent's ability to care for the child. (§§41-430.11-.15.)

181-16B ADDED 11/10
The determination that incapacity exists shall take into consideration the limited employment opportunities of handicapped individuals and be based upon the following acceptable evidence:

.21 A finding of eligibility for OASDI, SSI/SSP, worker's compensation, or SDI benefits based upon parent's disability or blindness is conclusive proof of incapacity for AFDC purposes when verified by the authorizing agency and the verification is adequately documented in the case record.

.22 Form CA 341 (Medical Report) or other written statement from a physician licensed or certified psychologist, or by an authorized member of his or her staff with access to the patient's medical records that provides information sufficient to substantiate the determination of incapacity and includes a diagnosis of the parent's condition and explanation of the extent to which it prevents him or her from engaging in employment or why it reduces substantially, or eliminates the parent's ability to support or care for the child; the expected duration of the condition, and date of the next scheduled examination or appointment.; and, the doctor's name, address and phone number. (§§41-430.2, .21-.22.)

181-17 ADDED 11/10
Establishing AFDC-FG/U linkage when the child would have been eligible had application been made will required documentation in the services and eligibility files that a preponderance of evidence supports that determination. There can be no substantial evidence that would definitively indicate ineligibility to the AFDC-FG/U Program. This method of establishing linkage is referred to as the "Preponderance of Evidence Model" (POEM). (ACL No. 94-15, §II, p. 2, issued Feb. 18, 1994.)

181-17A ADDED 11/10
Income, generally, is any benefit in cash or in kind which is in fact currently available to the individual or is received as a result of current or past labor or services, etc. (§44-101, issued Jul. 1, 1989.)

181-17B ADDED 11/10
Earned income is income received in cash or in kind as wages, salary, employer provided sick leave, State Disability Insurance (SDI) benefits, temporary indemnity from Worker's Compensation (WC), commissions or profits from business enterprises, farming, etc., in which the recipient is engage as a self-employed person or employee. (§44-101.51, eff. Mar. 1, 1996.)

181-17C ADDED 11/10
Earned income does not include benefits paid as a result of unemployment, including UIB benefits. (§44-101.532, eff. Apr. 1994.)

181-17D ADDED 11/10
All income shall be considered currently available in the month received, except, for example, governmental recurring income where the receipt date of the income varies because mailing cycles cause two payments to be received in one month and none in the preceding or following month. (§44-102(e)(1), eff. Mar. 1, 1996.)

181-17E ADDED 11/10
The gross income and net non-exempt income standard test for AFDC-FG/U as of July 16, 1996 must be met for AFDC-FC eligibility, using the prevailing Minimum Basic Standard of Adequate Care (MBSAC) and Maximum Aid Payments (MAP) in place as of July 16, 1996. (ACL No. 98-01, issued Jan. 2, 1998.)

181-17F

ADDED 11/10

The prevailing MBSAC and MAP for assistance units (AU) as of July 16, 1996, is as follows:

AU Size	*MBSAC*	*185% MBSAC*	*MAP*
1	$355.00	$656.00	326.00
2	583.00	1,078.00	535.00
3	723.00	1,337.00	663.00
4	858.00	1,587.00	788.00
5	979.00	1,811.00	899.00
6	1,101.00	2,036.00	1,010.00
7	1,209.00	2,236.00	1,109.00
8	1,317.00	2,436.00	1,209.00
9	1,428.00	2,641.00	1,306.00
10	1,551.00	2,869.00	1,403.00

(ACL No. 98-01, Attachment A, issued Jan. 2, 1998.)

181-17G ADDED 11/10

The gross income test in place as of July 16, 1996 mandated that the AU's gross income (earnings and other unearned income) after excluding the income of an excluded member, must not exceed 185 percent of MBSAC plus any special needs. (§§44-207.2, .3.)

181-17H ADDED 11/10

The net non-exempt income test in place as of July 16, 1996 mandated that the AU's gross income, less a $90.00 deduction from earnings for work-related expenses, less dependent care

up to $200.00 for each cared-for child, and less the $30.00 and 1/3 disregard from earnings (only when applicable), must not exceed the MBSAC. (§44-207.32.)

181-17I ADDED 11/10
In determining net non-exempt income eligibility as of July 16, 1996, the 4-month time limit on taking a $30 and 1/3 earnings disregard or exemption, which was waived in September 1993 for cash aid, must be applied in determining AFDC-FC eligibility. (ACL No. 98-01, issued Jan. 2, 1998.)

181-17J ADDED 11/10
The $30.00 of earnings and 1/3 of remaining earnings disregarded shall be made available to families subject to limitations. This disregard shall NOT be made available in the following instances: To determine an applicant's gross income eligibility (185% MBSAC test); the disregard was given in any 4 consecutive months as a recipient without a 12-month intervening period; the recipient failed to report income without good cause; the recipient terminated employment or reduced earnings without good cause within the budget period or 30 days immediate preceding. (§§44-111.231, .232, issued Jul. 1, 1989.)

181-17K ADDED 11/10
For purposes of determining net non-exempt income eligibility, the $30.00 and 1/3 earning exemption shall be applied subject to section 44-111.23, and only if the person who earned the income (and currently in the AU) was eligible for and received an AFDC payment from any state during at least one of the preceding four-months. (§44-207.322.)

181-20
To be eligible for the federal AFDC-FC program, the child shall meet one of the following criteria for placement in FC. The child shall be removed from the home of a parent or relative as the result of a court order which specifies that responsibility for placement and care is given to one of the designated county agencies; and if the child was placed into FC on or after October 1, 1983, reasonable efforts have been made to prevent or eliminate the need for removal of the child from his or her home and to make it possible for the child to return to his or her home. The court order shall result in the child's placement in FC with a nonrelative or with a different relative than the one from whose home the child was removed. (§§45-202.411(a) and (b))

181-20A ADDED 11/10

As of 2000, the county must verify that requisite language must be incorporated into the court order or minute order of the first hearing where Juvenile Court orders the child removed (typically the detention hearing) from his or her home, in order to establish or maintain the child's federal Foster Care eligibility. Nunc Pro Tunc orders will no longer be accepted for establishing a child's federal Foster Care eligibility. The requisite language must include:

(1) "Contrary to Welfare" language – the initial order must state that continuity in the home is contrary to welfare of the minor, or there is a substantial danger to the welfare of the minor if not removed, or words to that effect;

(2) "Placement and Care" language – the order or a subsequent finding must state that placement and care is vested with the appropriate county agency; and, (3) "Reasonable Efforts" language – the order or a subsequent finding no later than 60 days from the initial detention order must incorporate a finding that reasonable efforts have been made to prevent, or eliminate the need for, removal [reasonable efforts language is NOT needed if a judge finds such efforts weren't needed due to aggravated circumstances, involuntary termination of parental rights, or the parent was convicted of a specified felony]. (All County Letter (ACL) No. 01-33, issued Jun. 20, 2001, incorporating changes to federal law, superseding ACL Nos. 92-17, and 94-75, questions 1, 4, and 30; and superseding All County Information Notice (ACIN) No. I-91-85.)

181-20B ADDED 7/06
County staff must verify that the court made a finding that "continuance in the home is contrary to the welfare of the minor" or a finding to that effect. Other acceptable examples include: "there is substantial danger to the welfare of the minor without removing the minor," or "the welfare of minor requires that custody be taken from parents." For federal AFDC-FC, this court finding must be in the first court order which removes the child from his or her home (typically the detention hearing). **If this finding is not made at the first hearing which removes the child from his/her home, the child is ineligible for federal AFDC-FC funding for the duration of that stay in foster care.** Special attention should be made in cases where continuances are requested at the detention hearing. If the continuance is granted without a contrary to the welfare finding, the child will be ineligible for federal AFDC-FC for the duration of that stay in foster care. If a continuance is requested, county court staff should request that the judge make the contrary to the welfare finding prior to granting the continuance.

For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be in the first court order removing the child from his or her home.

(ACIN I-27-06, April 25, 2006)

181-20C ADDED 11/10
The "Contrary to Welfare" finding must be made at the first court hearing removing the child from the home of his parents or guardian, usually pursuant to Welfare and Institutions Code section 319 or, from a guardian, section 632; the finding cannot be delayed even for a one-day continuance under sections 322 or 638. (Cal. Rules Court, Rule 5.550, subd. (c)(2); Admin.

Office of the Courts, Center for Families, Children & the Courts (CFCC), Title IV-E Eligibility, issued Nov. 1, 2000.)

181-20D ADDED 7/06
County staff must verify that the court made a finding that "placement and care" is vested with one of the agencies listed in MPP §45-202.6 (federal) or 45-203.5 (State), or a finding to that effect. Other acceptable examples include: "temporary placement and care is vested with the county" or "care, custody, and control is vested with the county." **This finding may be in any court order, but State and federal AFDC-FC foster care cannot be granted prior to the finding being made.**

(ACIN I-27-06, April 25, 2006)

181-20E ADDED 7/06
County staff must verify that the court made a finding that "reasonable efforts to prevent or eliminate the need for removal" have been made by the county. This finding must be made by the court no later than 60 days from the date the child is removed from the home; **if this finding is not made timely, the child is ineligible for federal AFDC-FOSTER CARE funding for the duration of that stay in foster care.** For State AFDC-FC, this finding must be made prior to the approval of State AFDC-FC, but need not be made within 60 days from the date of removal. A finding that reasonable efforts to prevent removal and/or reunify the family is NOT required where the county obtains a finding from a judge that reasonable efforts were not necessary because:

a. the parent has subjected the child to aggravated circumstances such as abandonment, torture, chronic abuse, or sexual abuse; or

b. the parent has been convicted of murder or voluntary manslaughter of another child of the parent; or

c. the parent has been convicted of aiding or abetting, attempting, conspiring, or soliciting to commit such a murder or voluntary manslaughter; or

d. the parent has been convicted of a felony assault that results in serious bodily injury to the child or another child of the parent; or

e. the parental rights of the parent have been terminated to a sibling of the child in foster care.
(ACIN I-27-06, April 25, 2006)

181-20F ADDED 11/10
Federal regulatory changes made January 25, 2000 mandated that "Reasonable Efforts" language must be incorporated into a detention order within 60 days of a child's removal; that nunc pro tunc orders cannot be used to insert requisite language retroactively into previous orders; and that a new detention order with requisite language findings must be implemented if

a child is removed after more than 6 months following "trial home visit" without a court-ordered extension. (Title 45 CFR, §1356.21, (b), (d), and (e); amended Jan. 25, 2000 by 65 FR 4088, 65 FR 4020-01.)

181-20G ADDED 11/10
If a trial home visit exceeds 6 months (unless the Court has extended the home visit beyond 6 months) and the minor subsequently is removed, the placement must be considered a new placement episode and eligibility for Foster Care redetermined, with new federal linkage determination. (ACL No. 01-33, issued Jun. 20, 2001, incorporating state adoption of ASFA, superseding ACL Nos. 92-17, and 94-75, questions 1, 4, and 30; and superseding All County Information Notice (ACIN) No. I-91-85.)

181-21 ADDED 11/10
The judicial determinations regarding contrary to the welfare, reasonable efforts to prevent removal, and reasonable efforts to finalize the permanency plan in effect, and the judicial determinations that reasonable efforts are not required, must be explicitly documented and must be made on a case-by-case basis and so stated in the court order. If the reasonable efforts and contrary to the welfare judicial determinations are not included as required in the court orders, a transcript of the court proceedings is the only other documentation that will be accepted to verify that these required determinations have been made. (Title 45, CFR §1356.21(d), (d)(1).)

181-21A ADDED 11/10
Within 12 months of the date the child entered foster care, the Court must make a finding in its order that the agency has made reasonable efforts to finalize the permanency plan, whether the plan is for reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement. If this finding is not made timely, the child loses federal Foster Care eligibility at the end of the 12th month after the date the child entered foster care, and remains ineligible until the finding is made. Moreover, this finding must be made every 12 months thereafter.

The date the child entered foster care is defined as the earlier of the following dates: The date of the first judicial finding that the child has been subjected to abuse or neglect; or, 60 days from the date of removal from the home.

(ACL 01-33, issued Jun. 20, 2001.)

181-21B ADDED 11/10

The State agency must obtain a judicial determination that it has made reasonable efforts to finalize the permanency plan that is in effect (whether the plan is reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another planned permanent living arrangement) within twelve months of the date the child is considered to have entered foster care in accordance with the definition at section 1355.20 of this part, and at least once every twelve months thereafter while the child is in foster care. If such a judicial determination regarding reasonable efforts to finalize a permanency plan is not made in accordance with the schedule prescribed in paragraph (b)(2)(i) of this section, the child becomes ineligible under title IV-E at the end of the month in which the judicial determination was required to have been made, and remains ineligible until such a determination is made. (Title 45 CFR §1356.21,(b)(2))

181-30 ADDED 11/10

In 1997, Congress passed the Adoption and Safe Families Act (ASFA), mandating states to speed up the process finding permanent homes for foster care children, providing incentives to states that meet federal adoption standards. (Adoption and Safe Families Act of 1997 (ASFA), Public Law 105-89; for application in Calif., Welfare and Institutions Code (W&IC) §16131; as to the broadening of caregivers and AFDC-FC eligibility for these caregivers, see Stats. 2001, c. 653 (A.B. 1695).)

181-30A ADDED 6/07

In 2001, California enacted AB 2695 to conform state law to the federal Adoptions and Safe Families Act of 1997 (ASFA). The State law (see WIC §§ 361.3, 361.4 and 16518) require that the relative with whom children are placed as well as the relative's home meet standards comparable to federal FC licensing requirements. Prior to the issuance of FC benefits forms must be completed verifying that such requirements have been met. For new approvals, eligibility workers must receive a completed and fully signed approval document once the home has been approved and a placement has been made. Provided all other eligibility criteria have been met, eligibility for new approvals will begin according to the date the approval standards were met. For existing homes, reassessment via the forms was to be completed by August 18, 2002. (All-County Letters (ACLs) Nos. 02-18, 02-58, February 19 and August 2, 2002)

181-30B ADDED 11/10

Prior to the issuance of an approval document the agency must ensure the caregiver and home meet all the standards in California Code of Regulations, Title 22, Division 6, Chapter 9.5, Article 3, "Caregiver Standards." (§31-445.3; relating to criminal record and child abuse clearances, Title 22, CCR §89319, and buildings and grounds, §§89387, 89387.1.)

181-31 ADDED 6/07
A home cannot be approved for federal or State foster care funding purposes until Live Scan results are received from the Department of Justice, the FBI clearance has been requested, an affidavit (CCL form LIC 508D) affirming no criminal history has been executed, and rap-back service established. The date of the approval and the date payment of Title IV-E or State AFDCFC begins is the date that all approval standards are documented as met. However, a child may be placed on an emergency basis (without State or federal foster care funding) based on the results of a CLETS and CACI request pending the Live Scan results and determination that the relative/NREFM otherwise meets approval standards. (ACL No. 05-13, July 16, 2005, answer to Question No. 24)

181-31A ADDED 11/10
The agency's decision not to grant an exemption for a criminal conviction is an executive one, subject to administrative review. This does not necessarily mean the criminal records exemption process is immune from judicial review within the context of the child's dependency proceedings. (*In re Esperanza C.* (2008, 4th Dist.) 165 Cal.App.4th 1042, 1059.)

181-31B ADDED 11/10
A criminal record clearance is mandatory for those subject to licensing for community care facilities (including foster care caregivers). Such review will require submission of completed fingerprints pursuant to Health and Safety Code section 1522, and also a search of the Child Abuse Clearance Index (CACI). The licensing agency may conduct an authorized search of the California Law Enforcement Telecommunications System (CLETS). (Title 22 CCR §89319.)

181-31C ADDED 11/10
Prior to October 2008: The fingerprint Live Scan technology shall be used to process fingerprints through the California Department of Justice (DOJ), using the California Crime Information Intelligence System (CAL-CII). Before issuing a license to a person operating or managing a community care facility (including foster care homes), the agency shall secure from an appropriate law enforcement agency that the person has not been convicted of listed California crimes. For those coming into direct contact with serviced clients (as in foster care minors), a second set of fingerprints shall be submitted to DOJ for the purpose of searching the criminal records of the Federal Bureau of Investigation (FBI). If all other licensure requirements except the FBI criminal records clearance have been met, the agency may issue a license if the person signs and submits a statement he or she has never been convicted of a crime in the United States, other than a traffic infraction. If after licensure the agency discovers otherwise

once the FBI search results are received, the license may be revoked. (Health & Saf. Code, §1522, prior to October 1, 2008.)

181-31D ADDED 11/10
Effective October 1, 2008, the Legislature amended state licensure requirements for persons operating CFHs or FFHs mandating the CCL-licensing authority to secure both DOJ and FBI background information prior to issuing a license; the CCL-agency shall not issue a license or certificate of approval to any FFH or CFH applicant who has not obtained both DOJ and FBI criminal record clearance or exemption from disqualification. (Health & Saf. Code, §1522(d)(1); Stats 2008, c. 710, §4 (A.B. 2651), enacted Sept. 30, 2008, eff. Oct. 1, 2008; also see Stats. 2009, c. 246, §1 (A.B. 595), eff. Oct. 11, 2009.)

181-31E ADDED 11/10
Before granting a CCL license to a person operating a foster family home, the applicant shall be fingerprinted and sign a declaration regarding any prior convictions or arrests for any crime against a child, spousal or cohabitant abuse or any crime that cannot be exempted. A license can only be granted once the arrest record of such crimes has been investigated to establish if the conduct poses a risk to the health and safety of any foster child. (Health & Saf. Code, §1522d)(5) (e))

181-31F ADDED 11/10
The agency with CCL authority shall not use a record of arrest to deny, revoke, or terminate any CCL application, license, employment, or residence unless the agency has investigated the incident and secures evidence admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. (Title 22, CCR §89219, subd. (g)(8); citing Health & Saf. Code, §1522(d))

181-31G ADDED 11/10
Under the Community Care Facilities Act, the California Department of Social Services, through the action of an administrative hearing before the Office of Administrative Hearings, may be denied a community care license (CCL) when the applicant or holder has exhibited conduct that is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or the people of the State of California. (Health & Saf. Code, §§1500, et seq., and specifically §1550(c).)

181-32 ADDED 3/09
The revised state form SOC 815 “Approval of Family Caregiver Home” now provides spaces to list adults who have “significant contact” with a dependent child in running criminal background checks. The following adults are not required to be Live Scanned: Adult friends and family of the foster parent or child in a Certified Family Home or Foster Family Home, who come into the home to visit for a length of time no longer than one month, providing they are not left alone with the dependent child. (Title 22, CCR §89219,(b)(6), (b)(7); Health & Safety Code§1522(b))

181-32A ADDED 3/09
The certified foster parent, licensed foster parent, approved relative or non-relative caregiver, acting as a “reasonable and prudent parent” may allow his or her adult friends and family to provide short-term care to the child and act as an appropriate occasional short-term babysitter for the child (not to exceed 24 hours). (W&IC §362.04(b)).

A “reasonable and prudent parent” or “reasonable and prudent parent standard” means the standard characterized by careful and sensible parental decisions that maintain the child's health, safety, and best interest. (W&IC §362.04(a)(2))

181-32B ADDED 3/09
Medical professionals are not required to be Live Scanned if: The professional is validly licensed in California, and not employed, retained, or contracted by the licensee (caregiver); the professional’s criminal record was already cleared through the professional licensure; the professional is providing time-limited specialized clinical services within the professional’s scope of practice; and, the professional is not a community care facility licensee or an employee of the CCF. (Title 22 CCR., §89219(b)(1))

181-33 ADDED 11/10
No criminal exemption can be granted for Penal Code offenses under sections 220, 243.4, 264.1, 273a(a), 273a(1) prior to January 1, 1994, 273d, 288, 289, 290(c), 368, or convictions under other crimes specified in section 667.5(c). (Health & Saf. Code, §1522(g)(1))

181-33A ADDED 11/10
Prior to October 1, 2008, the CCL agency had discretion to grant exemptions for crimes committed under Penal Code sections 667.5(c)(1) [murder/voluntary manslaughter], (2) [mayhem], (7) [life crimes/death penalty], or (8) [great bodily injury] if the applicant was rehabilitated (Pen Code, §4852.03) and maintained the conduct required (Pen. Code, §4852.05) for ten years or more, and had the recommendation of the District Attorney; or, the applicant received a Certificate of Rehabilitation (Pen. Code, §4852.01). (Health & Saf. Code, §1522(g)(1)(A)(ii))

181-33B ADDED 11/10
Effective October 1, 2008, the potential exemption grants no longer applied for rehabilitated applicants (see subd. (g)(1)(A)(iii)) who were convicted of crimes under Penal Code section 667.5(c)(1) [murder] for "foster care providers, including relative caregivers, nonrelated extended family members, or any other person specified in subdivision (b)" of this statute. (Health & Saf. Code, §1522(g)(1)(A)(ii); Stats 2008, c. 710, §4 (A.B. 2651), enacted Sept. 30, 2008, eff. Oct. 1, 2008; also see Stats. 2009, c. 246, §1 (A.B. 595), eff. Oct. 11, 2009.)

181-33C ADDED 11/10
Effective October 1, 2008, unless an applicant was granted exemption prior to October 1, 2008, criminal exemptions were no longer available for any foster care provider applicant if that applicant or any other person specific in subdivision (b) in those homes, has a felony conviction for either of the following offenses: A felony conviction for child abuse or neglect, spousal abuse, crimes against a child, including child pornography, or for a crime involving violence, including rape, sexual assault, or homicide, but not including other physical assault and battery; or a felony conviction within the last 5 years for physical assault, battery, or a drug or alcohol-related offense. Moreover, these exemption restrictions would only be operative to the extent necessary to comply with federal Foster Care funding eligibility under Title IV-E of the Social Security Act. (Health & Saf. Code, §1522, subds. (g)(1)(C), (g)(1)(C)(i)-(iv); Stats 2008, c. 710, §4 (A.B. 2651), enacted Sept. 30, 2008, eff. Oct. 1, 2008; also see Stats. 2009, c. 246, §1 (A.B. 595), eff. Oct. 11, 2009.)

181-33D ADDED 11/10
For the purpose of this section, "violent felony" shall mean any of the following:

(1) Murder or voluntary manslaughter.

(2) Mayhem.

(3) Rape as defined in paragraph (2) or (6) of subdivision (a) of Section 261 or paragraph (1) or (4) of subdivision (a) of Section 262.

(4) Sodomy as defined in subdivision (c) or (d) of Section 286.

(5) Oral copulation as defined in subdivision (c) or (d) of Section 288a.

(6) Lewd or lascivious act as defined in subdivision (a) or (b) of Section 288.

(7) Any felony punishable by death or imprisonment in the state prison for life.

(8) Any felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in Section 12022.7, 12022.8, or 12022.9 on or after July 1, 1977, or as specified prior to July 1, 1977, in Sections 213, 264, and 461, or any felony in which the defendant uses a firearm which use has been charged and proved as provided in subdivision (a) of Section 12022.3, or Section 12022.5 or 12022.55.

(9) Any robbery.

(10) Arson, in violation of subdivision (a) or (b) of Section 451.

(11) Sexual penetration as defined in subdivision (a) or (j) of Section 289.

(12) Attempted murder.

(13) A violation of Section 12308, 12309, or 12310 [related to explosive devices].

(14) Kidnapping.

(15) Assault with the intent to commit a specified felony, in violation of Section 220.

(16) Continuous sexual abuse of a child, in violation of Section 288.5.

(17) Carjacking, as defined in subdivision (a) of Section 215.

(18) Rape, spousal rape, or sexual penetration, in concert, in violation of Section 264.1.

(19) Extortion, as defined in Section 518, which would constitute a felony violation of Section 186.22 of the Penal Code.

(20) Threats to victims or witnesses, as defined in Section 136.1, which would constitute a felony violation of Section 186.22 of the Penal Code.

(21) Any burglary of the first degree, as defined in subdivision (a) of Section 460, wherein it is charged and proved that another person, other than an accomplice, was present in the residence during the commission of the burglary.

(22) Any violation of Section 12022.53.

(23) A violation of subdivision (b) or (c) of Section 11418. The Legislature finds and declares that these specified crimes merit special consideration when imposing a sentence to display society's condemnation for these extraordinary crimes of violence against the person. (Pen. Code, §667.5, subd. (c); however, Stats. 2010, c. 178 [S.B. 1115], §63, amended (c)(13) to state Pen. Code §§ 18745, 18750, & 18755 [“destructive devices”] are violent felonies, replacing sections 12308, 12309, & 12310.)

181-34 ADDED 11/10
If the criminal records check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child may not be

placed in the home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child. (W&IC §361.4(d)(2))

181-34A ADDED 11/10
The Community Care Licensing Evaluator Manual (CCL EM) states that before a criminal exemption may be granted, the following must be established, in addition to other requirements: For one non-violent misdemeanor, one year must lapse since the end of supervised probation or incarceration. For two or more non-violent misdemeanors or one non-violent felony, 4 years must lapse. For one violent misdemeanor, 15 years must lapse. For two or more non-violent felonies, 10 years must lapse. A criminal exemption for any exemptible violent felony must be approved by a Branch Chief or equivalent person in the agency authorized to issue the criminal exemption. (State Community Care Licensing Evaluator Manual (CCL EM), §7-1736.)

181-34B ADDED 11/10
Adults on formal or supervised probation or parole cannot be granted exemption. However, notwithstanding title 22 of the California Code of Regulations, section 80019.1, subdivision (j)(2)(A), those on summary (unsupervised or informal) probation (usually only issued in misdemeanor convictions) may be granted an exemption, providing other criteria under the CCL Evaluator Manual are met. (CCL EM, §§7-1735, 7-1736.)

181-34C ADDED 11/10
For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, when the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other

provision of law prohibiting the admission of these documents in a civil or administrative action. (Health & Saf. Code, §1522 (f)(1))

181-34D ADDED 11/10
Proposition 21 expanded "any robbery" to constitute a "violent felony" for purposes of both sentencing enhancements and those felonies deemed not to be exemptible under the state's CCL laws. Previously, a robbery was deemed to be a "violent felony" for these purposes if the robbery was perpetrated in an inhabited dwelling or vessel, or in any building if charged and proved a deadly or dangerous weapon was used in the commission of the robbery. (Pen. Code, §667.5(c)(9); amended by Init. Meas., Prop. 21, §2, approved Mar. 7, 2000, eff. Mar. 8, 2000.)

181-34E ADDED 11/10
Second degree robberies were challenged as non-exemptible crimes under CCL laws. In the Superior Court case *Glesmann v. Saenz*, the Court ruled that a perpetrator who had previously committed second degree robbery and had obtained a certificate of rehabilitation, could not be treated as having committed a non-exemptible crime. (ACL No. 04-46, issued Nov. 19, 2004.)

181-34F ADDED 11/10
The First District Court of Appeal heard the *Glesmann* case upon the state's appeal, and issued its ruling in 2006, stating that CDSS CCLD's reliance upon all Penal Code section 667.5, subdivision (c), definitions of "violent crimes" were not necessarily non-exemptible. The Court noted that only those crimes "against an individual" that included the use of force or threat to inflict harm, should be deemed non-exemptible crimes. The Court found, for example, that not all burglaries, even with persons present, necessarily involved a specific force or threat-related confrontation between perpetrator and victim to meet this standard. The Court extended this provision to "second degree robbery" as well. (*Glesmann v. Saenz* (1st. Dist., 2006) 140 Cal.App.4th 960; see ACL No. 06-40, issued Nov. 2, 2006.)

181-34G ADDED 11/10
In compliance with the *Glesmann* Court, the state's CCL policy is that regardless of whether a burglary or second degree robbery conviction is listed under Penal Code section 667.5, subdivision (c), as a "violent felony," the conviction is not conclusively non-exemptible for CCL purposes. If the conviction is not demonstrated to be a crime against an individual using force or threat of force against a victim, then the conviction is subject to exemption, providing the applicant submits a Certificate of Rehabilitation. (ACL No. 06-40, issued Nov. 2, 2006; citing *Glesmann v. Saenz* (1st. Dist., 2006) 140 Cal.App.4th 960.)

181-35 ADDED 11/10
An agency with Community Care Licensing (CCL) authority must provide sufficient due process to CCL applicants and license holders in assessing the individual's past criminal history, whether the crime is exemptible or non-exemptible. Specifically, individuals accused of being convicted of exemptible offenses must be informed as to what offense they are deemed to have been convicted, and provided sufficient procedure to request a needed exemption for licensure. Those who are in the process of diversion or deferred entry of judgment are not to be considered waiting for trial, and their licensure status must be cleared. (*Gresher v. Anderson* (1st Dist., 2005) 127 Cal.App.4th 88; *Doe v. Saenz* (1st Dist., 2006) 140 Cal.App.4th 960.)

181-40 ADDED 11/10
Prior to granting or approving a license to caregivers, the department shall check the Child Abuse Central Index (CACI). DOJ shall maintain and continually update an index of reports of child abuse, informing the department (or any county licensing agency contracted with the state concerning licensures of persons with supervisory or disciplinary duties over children) of subsequent reports received from CACI, as well as criminal history. The department shall investigate reports received from CACI, and that investigation shall include, but not limited to, the review of the investigation report and file prepared by the child protective agency that investigated the child abuse report. The department shall not deny a license upon a report from CACI unless child abuse is substantiated. (Health & Saf. Code, §1522.1; Pen. Code, §11170. (a)(1), (a)(2); Title 22, CCR §89219.2(a).)

181-40A ADDED 11/10
DOJ shall maintain an index (CACI) of all reports of child abuse and severe neglect submitted by mandated reporters or to police authorities, probation agencies, or county welfare department. The index shall be continually updated by DOJ and shall not contain any reports that are determined to be unfounded. DOJ shall only act as a repository of reports of child abuse and severe neglect in the CACI. Submitting agencies are responsible for the accuracy, completeness, and retention of the reports. (Pen. Code, §§11170(a)(1), (a)(2); 11169; and, 11165.9.)

181-40B ADDED 11/10
The agency with CCL authority shall investigate any reports received from the CACI. The investigation shall include, but not be limited to, the review of the investigation report and file prepared by the child protection agency that investigated the child abuse report. The agency

shall not deny a license based upon a report from the CACI unless it substantiates the allegation of child abuse. (Title 22, CCR §89219.2(a)(2).)

181-40C ADDED 11/10
The agency with CCL authority shall conduct an investigation for any reported incidents reflected on the CACI, and this investigation must be consistent with the procedures set forth under CCL EM, section 3-2710. Where the underlying investigative facts do not support an allegation of abuse, the agency must clear the case for CCL licensure. (CCL EM, §7-1400, revised May 2007)

181-40D ADDED 11/10
The agency investigating whether reported incidents reflected in the CACI are founded must obtain all available reports from agencies involved with original abuse investigation, obtain any copies of any prior investigations the agency conducted; contact all potential witnesses as the agency would for a complaint investigation; and, it is permitted to ask the individual to provide an explanation of what happened in the individual's own words. A letter of explanation or declaration may be obtained and submitted. (CCL EM, §3-2710, revised Nov. 2002.)

181-40E ADDED 11/10
"Severe neglect" under the Child Abuse and Neglect Reporting Act (CANRA) is defined as the negligent failure of a person having the care or custody of a child to protect the child from severe malnutrition or medically diagnosed non-organic failure to survive; or, those situations of neglect where a caregiver willfully causes or permits the health of the child to be endangered, including the intentional failure to provide adequate food, clothing, shelter, or medical care. (Pen. Code, §11165.2.)

181-41 ADDED 11/10
Federal Court has deemed that an applicant with a CACI reported incident of a substantiated hit where the applicant was found factually innocent of abusing or severely neglecting a child, meets the "stigma-plus" due process test (under 42 USC, §1983), and calls into question the validity of Penal Code section 11170 as to failing to provide statewide safeguards for removing erroneous reports to the CACI, and, instead, relying upon the independent investigation of local agencies relying upon the CACI. (*Humphries v. Los Angeles County* (9th Cir., 2009) 554 F.2d 1170)

181-45 ADDED 11/10
The department shall make available to an out-of-state agency, for purposes of approving a prospective foster or adoptive parent in compliance with the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), information regarding a known or suspected child abuser maintained pursuant to subdivision (a) concerning the prospective foster or adoptive parent, and any other adult living in the home of the prospective foster or adoptive parent. The department shall make that information available only when the out-of-state agency makes the request indicating that continual compliance will be maintained with the requirement in paragraph (20) of subdivision (a) of Section 671 of Title 42 of the United States Code that requires the state to have in place safeguards to prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the state and prevent the information from being used for a purpose other than the conducting of background checks in foster or adoption placement cases. (Pen. Code, §11170(e)(1))

181-45A ADDED 11/10
P.L. 109-248 amends Section 471(a)(20) of the Social Security Act [42 USC, §671] in several ways with regard to the background checks for prospective foster and adoptive parents:

States must have procedures for conducting fingerprint-based checks of the NCID for all prospective foster and adoptive parents (Section 471(a)(20)(A) of the Act as amended);

States must check any child abuse and neglect registry in each State the prospective foster and adoptive parents and any other adult(s) living in the home have resided in the preceding five years. These checks must be made regardless of whether Title IV-E foster care maintenance payments or adoption assistance payments are to be made on behalf of the child (new Section 471(a)(20)(C)(i) of the Act); and

States must have safeguards in place to: 1) prevent the unauthorized disclosure of information in any child abuse and neglect registry maintained by the State; 2) prohibit the State from sharing the information obtained from the registry pursuant to the foster and adoptive parent check requirement for any other purpose; and 3) comply with child abuse and neglect registry check requests made by other States (new Section 471(a)(20)(C)(ii) and (iii) of the Act). (ACYF-CB-06-04, issued Sept. 1, 2006.)

181-50 ADDED 11/10
Each bedroom or sleeping room shall have at least one operable window or door that ensures safe, direct, emergency exit to the outside. If security window bars are used, the window is considered operable only if the window bars have a safety release device that meets all state and local requirements. (Title 22, CCR div. 6, c. 9.5, art. 3, §89387(q))

181-50A ADDED 11/10

The home shall be clean, safe, sanitary, and in good repair at all times for the safety and well-being of the children. (Title 22, CCR §89387(b))

181-50B ADDED 11/10
The caregiver shall provide bedrooms in the home which shall meet, at a minimum, the following requirements unless a documented alternative plan is approved: (1) No more than two children shall share a bedroom; (2) Children of the opposite sex shall not share a bedroom unless each child is under five years of age; (3) No room commonly used for other purposes shall be used as a bedroom; (A) Such rooms shall include but not be limited to halls, stairways, unfinished attics or basements, garages, storage areas and sheds or similar detached buildings; (4) No bedroom shall be used as a public or general passageway to another room; (5) The caregiver shall provide each child with an individual bed which is equipped with a clean, comfortable mattress, clean linens, blankets, and pillows, as needed, all in good repair; (A) Linen shall be changed at least once per week or more often when necessary to ensure that clean linen is in use by children at all times; (B) Beds shall be arranged to allow easy passage between beds and easy entrance into the room; (6) Each bedroom shall have portable or permanent closets and drawer space to accommodate the child's clothing and personal belongings; (7) The caregiver shall provide each infant with a safe and sturdy bassinet or crib, appropriate to the child's age and size; (8) Except for infants, children shall not share a bedroom with an adult; (A) In bedrooms shared by adults and infants, no more than two infants and no more than two adults shall share the room; (9) Sections 89387(a)(1) through (a)(8) apply to all bedrooms used by all children residing in the home, including children who are members of the caregiver's family, guardianship children, and children in placement; (10) Sections 89387(a)(3) and (a)(4) apply to all bedrooms used by the caregiver and all other adults residing in the home. (Title 22, CCR §89387 (a)(1) through (a)(10))

181-50C ADDED 11/10
When considering placement of a child in a relative or nonrelative extended family member home, the child welfare agency shall assess the home and the caregiver to the approval standards by completing the following requirements:

An in-home evaluation of the home shall be conducted. Such evaluation shall include the following: An assessment of the prospective foster parent'(s) ability and desire to meet the child's specific needs and to participate in planning for the child. Verification that the home has no safety defects that could pose a hazard to the child, including, but not limited to, the following: An unfenced swimming pool if serving a child who is either under ten years of age or has a disability for whom special care and supervision is required as a result of his/her condition, unless an acceptable alternative method of inaccessibility, noted in Section 31-445.3 at Handbook Sections 89387(d) and (e) is present; exposed electrical wiring; inoperative plumbing fixtures. (§§31-445.1, .11.)

181-51 ADDED 11/10
The following definitions shall apply whenever the terms are used throughout this chapter.

(d)(1) "Deficiency" means any failure to comply with any provision of the Community Care Facilities Act commencing with Section 1500 of the Health and Safety Code and/or regulations adopted by the Department pursuant to the Act.

(d)(5) "Documented Alternative Plan (DAP)" means a written plan, reviewed and approved by the licensing or approval worker on a case-by-case basis as a plan that is an alternative, but equally protective manner of meeting the intent of specified regulations in Article 3 of this chapter. (Title 22, CCR §89201(d)1), (d)(5))

181-51A ADDED 11/10
"Serious Deficiency" means any deficiency that presents an immediate or substantial threat to the physical health, mental health or safety of any child in a home. (Title 22, CCR §89201(s)(1))

181-51B ADDED 11/10
(a) When an evaluator visits a home and determines that a deficiency exists, the evaluator shall issue a notice of deficiency, unless the deficiency is not serious and is corrected during the visit.

(b) Prior to completion of a visit the caregiver, or other person in charge of the home shall meet with the evaluator to discuss any deficiencies noted, to jointly develop a plan for correcting each deficiency and to acknowledge receipt of the notice of deficiency.

(c) The evaluator shall provide a notice of deficiency to the caregiver by one of the following:

(1) Personal delivery to the caregiver, at the completion of the visit;

(2) If the caregiver is not at the home, leaving the notice with the person in charge, at the completion of the visit. Under such circumstances, a copy of the notice shall also be mailed to the caregiver.

(3) If the caregiver refuses to accept the notice or the notice cannot be completed during the visit, mailing the notice to the caregiver.

(Title 22, CCR §89252(a), (b), (c))

181-51C ADDED 11/10
The notice of deficiency shall be in writing and shall include the following:

(1) Citation of the statute or regulation which has been violated.

(2) A description of the nature of the deficiency stating the manner in which the caregiver failed to com-ply with a specified statute or regulation, and the particular place or area of the home in which it occurred.

(3) The plan developed, as specified in (b) above, for correcting each deficiency.

(4) A date by which each deficiency shall be corrected. In determining the date for correcting a deficiency, the evaluator shall consider the following factors:

1. The potential hazard presented by the deficiency.

2. The number of children affected.

3. The availability of equipment or personnel necessary to correct the deficiency.

4. The estimated time necessary for delivery, and for any installation, of necessary equipment.

The date for correcting a deficiency shall not be more than 30 calendar days following service of the notice of deficiency, unless the evaluator determines that the deficiency cannot be completely corrected in 30 calendar days. If the date for correcting the deficiency is more than 30 calendar days following service of the notice of deficiency, the notice shall specify corrective actions which must be taken within 30 calendar days to begin correction. The evaluator shall have the authority to require correction of a deficiency within 24 hours or less if there is an immediate threat to the health or safety of the clients.

(5) The address and telephone number of the licensing office responsible for reviewing notices of deficiencies for the area in which the home is located.

(6) A follow-up visit shall be conducted to determine compliance with the plan of correction specified in the notice of deficiency. (Title 22, CCR §89252(d))

181-51D ADDED 11/10
(a) Unless prior written licensing agency approval is received as specified in (c) below, a caregiver shall maintain continuous compliance with the licensing regulations.

(b) The licensing agency shall have the authority to waive or grant an exception to a specific regulation(s) if the request demonstrates how the intent of the regulation(s) will be met and under the following circumstances:

(1) Such waiver or exception shall in no instance be detrimental to the health and safety of any child.

(2) The applicant or caregiver shall submit to the licensing agency a written request for a waiver or exception, together with substantiating evidence supporting the request.

(3) No waiver or exception, pursuant to this section, shall be granted for any provision of Article 3, under this chapter [dealing with CCL approvals or the condition of the home under §89387].

(c) The caregiver shall retain the Department's written approval or denial of the request in its facility file. (Title 22, CCR §89224(a), (b), (c))

181-52 ADDED 11/10
The caregiver shall provide yard or outdoor activity space that is free from hazards to life and health. (Title 22, CCR §89387.1(a))